

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

EDWARD LEITE,

Petitioner,

No. C 15-4480 NJV (PR)

vs.

WARDEN,

Respondent.

**ORDER DISMISSING CASE
AND DENYING A
CERTIFICATE OF
APPEALABILITY**

Petitioner proceeds with a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 23, 2015, the court ordered petitioner to show cause why the case should not be dismissed as unexhausted. (Doc. 12.) Petitioner has not filed a response.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must "specify all the grounds for relief available to the petitioner ... [and] state the facts supporting each ground." Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. "[N]otice' pleading is not sufficient, for the petition is expected to state facts that point to a 'real possibility of constitutional error.'"

Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)). “Habeas petitions which appear on their face to be legally insufficient are subject to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

B. Analysis

Before he may challenge either the fact or length of his confinement in a habeas petition in this court, petitioner must present to the California Supreme Court any claims he wishes to raise in this court. See *Rose v. Lundy*, 455 U.S. 509, 522 (1982) (holding every claim raised in federal habeas petition must be exhausted). The general rule is that a federal district court must dismiss a federal habeas petition containing any claim as to which state remedies have not been exhausted. *Id.*

A fully unexhausted federal habeas petition may not be stayed and must be dismissed. See, e.g., *Raspberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) (holding that a fully unexhausted petition may not be stayed and observing: “Once a district court determines that a habeas petition contains only unexhausted claims, it need not inquire further as to the petitioner’s intentions. Instead, it may simply dismiss the habeas petition for failure to exhaust.”); *Jones v. McDaniel*, 320 Fed. Appx. 784, 786 (9th Cir.2009) (affirming the dismissal of a fully unexhausted petition and denial of a stay, because a “*Rhines* stay is only available for a mixed habeas petition where at least some of the claims have been exhausted, and none of [petitioner’s] claims were exhausted”).

It appeared that petitioner had presented a fully unexhausted petition. Petitioner was provided an opportunity to demonstrate that the claims had been exhausted or to file an amended petition raising exhausted claims. Petitioner has not filed a response or otherwise communicated with the court.

CONCLUSION

The petition is **DISMISSED** without prejudice. Because reasonable jurists would not find the result here debatable, a certificate of appealability (“COA”) is **DENIED**. See *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000) (standard for COA). The clerk shall close the

1 file.

2 **IT IS SO ORDERED.**

3 Dated: December 18, 2015.



NANDOR J. VADAS
United States Magistrate Judge

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